

**CITY OF ROCKVILLE PLANNING DIVISION
STAFF REPORT**

September 25, 2003

SUBJECT:

Special Exception Application SPX2003-00333 and
Waiver Application APP2003-00797

Applicant: Jay Lubliner
2 Fallswood Court
Rockville, Maryland 20854

Property Location: 2 Fallswood Court

Board of Appeals Public Hearing Date: October 4, 2003

REQUEST:

The applicant seeks a Special Exception for a ground-mounted amateur radio support structure with antennas and a Waiver for the setback of a ground-mounted antenna structure.

STAFF RECOMMENDATION:

Approval, subject to the following:

1. That the structure, antennas and use restrictions comply with the agreement reached between the applicant and the neighbors; and
2. The applicant must submit an Affidavit of Posting certifying that the public hearing sign has been posted on the property in accordance with City requirements.

ANALYSIS:

Project Proposal and Background

The applicant proposes to erect a ground-mounted telescoping antenna structure to support antennas used for amateur radio transmissions. In April, the applicant submitted a waiver application (APP2003-00797) for two antennas on the roof of the house. Concerns about the application were raised by the neighbors and the applicant modified his request to include one antenna on the roof and one on a ground mounted structure. A freestanding structure requires a Special Exception, which the applicant filed for in June. Since then, there have been meetings, arranged by the City Manager's Office, that have resulted in a compromise plan that is acceptable to both the applicant and the surrounding

neighbors. The proposal is now for a single ground-mounted antenna structure. A Special Exception is needed for the antenna structure because it is proposed to be mounted on the ground. A waiver is needed because the location selected for the fifty foot high structure is not setback fifty feet from the side property line.

ANALYSIS:

Property Description

The subject property is located in the Fallswood subdivision, where it is zoned R-150, Medium Density Residential. The Fallswood subdivision was developed under the Cluster Development provisions that allow for reduced clustered lots in exchange for open space. It is a 10,500 square foot interior lot that slopes upwards towards the house then down in the back to reveal a most of the basement. The rear lot contains many trees with a fairly high canopy.

Proposal

The applicant proposes to place a fifty-foot tall ground-mounted antenna support structure and antennas for amateur radio transmissions.

Applicable Sections of the Zoning Ordinance and Staff Assessment

In accordance with Section 25-338 of the Zoning Ordinance, the Board of Appeals shall not grant any petition for Special Exception unless it finds from a preponderance of the evidence of record that:

1. **The proposed use does not violate or adversely affect the Master Plan (the plan), Zoning Ordinance or any other applicable law; and**

Placing an amateur radio antenna support structure does not violate or adversely affect the Master Plan, the Zoning Ordinance or any other applicable law. Section 25-333(c)(1) limits the maximum height of a facility, including the antenna and other attachments to fifty feet in height. The structure with antennas is proposed to be no more than fifty feet in height. Section 25-333(c)(6) requires that antenna support structures be setback from the property line one foot for every foot in height. This structure is proposed to be approximately twelve feet four inches off the property line. Section 25-333(e)(2)(b), however, authorizes the Board of Appeals to grant a complete or partial waiver to any provisions contained in Section 25-333, meaning that the Board may waive the fifty foot setback for this proposal. Since the licensing of the amateur radio station is non-commercial venture and because the use of the property is not changed by this application, the proposed use does not violate or adversely affect the Master Plan, the Zoning Ordinance or any other applicable law.

2. The proposed use at the location selected will not:

- a) Adversely affect the health and safety of residents or workers in the area; or**

The Federal Communication Commission (FCC) is the agency responsible for the licensing of facilities such as this and their affects. To date, the FCC has not found any health or safety related concerns linked to this use.

- b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or**

The placement of antennas on a ground-mounted support structure and the transmission of amateur radio communications will not have any affect on public services or other public improvements.

- c) Be detrimental to the use or development of adjacent properties or the neighborhood; and**

The current proposal is the result of many months of work initiated by the staff of the City Manager's office to make the antennas and structures associated with this use palatable to the community. The type of structure, camouflage, height and location of the structure is the result of negotiations between the applicant and members of the community. All of these measure were taken in an effort to eliminate any detrimental effects to the use or development of adjacent properties or the neighborhood.

- d) Change the character of the neighborhood in which the use is proposed, considering services currently required, population density, character and number of similar uses; and**

Operating an amateur radio station within a single-family home does not affect the character of the neighborhood, services required or the population density. Regulating the number of similar uses, in this case, would contradict the FCC's provisions for the reasonable accommodation of amateur radio stations.

3. The proposed use complies with the requirements of the Zoning Ordinance that are applicable thereto.

The use and height complies with the requirements of the Zoning Ordinance but the proposed location of the structure does not without a waiver. Section 25-333(c)(6) requires that an antenna structure be setback one foot from the property line for every foot in height. The proposed location is the result of negotiations

between the applicant and members of the community in an effort to provide a reasonable access to radio signals for the applicant, take advantage of the existing trees for additional camouflage and place it in a location that is the least objectionable to the surrounding property owners. As a result, the support structure and antennas are taller than originally proposed by the applicant and they are closer to the side property line on the right. Section 25-333(e)(2)(b) authorizes the Board to grant a waiver from any of the provisions contained in Section 25-333. As such, the granting of a waiver will bring the proposed location into compliance with the Zoning Ordinance.

Section 25-374 requires that, in addition to the above findings that must be made for the grant of a Special Exception, the following additional findings are required.

- (1) The location selected is necessary for the public convenience and service and cannot be supplied with equivalent public convenience on a building or structure or collocation on an existing antenna support structure.**

Amateur radio is deemed by the Office of Homeland Security to be an integral part of the communications necessary during a time of emergency. The nature of amateur radio dictates that the antenna be in close proximity to the radio. As such, it is not possible to collocate it on an existing antenna support structure.

- (2) For new antenna support structures to be located in a residential zone or within five hundred (500) feet of a residential zone, it shall be demonstrated that a good faith effort has been made to locate the proposed antenna support structure in a nonresidential zone more than five hundred (500) feet from a residential zone, with adequate coverage and on an isolated site with minimal visual impact.**

Antennas for amateur radio are located in close proximity to the radio, connected by cable. They are also mostly licensed and operated by individuals from their homes. Because they are located in homes within residential neighborhoods, the option to place the support structure or antennas elsewhere is not available. In this proposal, the style and location and style of the antenna support structure was agreed upon by the applicant and the community in an effort to minimize the visual impact of the structure.

- (2) The City may hire an independent consultant to review evidence submitted by the applicant, and the applicant shall reimburse the City for the reasonable cost of hiring and utilizing such a consultant.**

One of the previous versions of the application was review by an independent consultant. In essence, the proposal was deemed to be reasonable considering the type of antennas proposed and the height of the structures. Since the application

was modified by the agreement reached by the applicant and the community, the previous evaluation is irrelevant. Since it is not required that the City hire an independent consultant and because the community finds the proposal to be acceptable, a new review was not requested.

Section 25-333(e)(2) allows that a waiver may be applied for from one or more provisions of Section 25-333 for the purpose of engaging in amateur radio communications provided that it can be shown to the Board of Appeals that:

- (i) **The provisions of Section 25-333 at issue preclude amateur service communications, do not reasonably accommodate amateur service communications at the waiver applicant's property or do not constitute the minimum practicable regulation to accomplish the City's health, safety and welfare objectives; and**

In this case the thirty-seven foot nine-inch waiver request is the result of the compromise that was reached between the applicant and the community. The proposal places the antennas on the mast between thirty-seven and fifty-feet above the ground. This will place the antennas at a height that is within the tree canopy. The location was chosen because it was deemed to be a spot where the pole was the least obvious to the surrounding neighbors and could mix with the surrounding trees. The waiver, therefore, is reasonable and necessary because the Zoning Ordinance's agreement reached between the applicant and his neighbors accomplishes the City's health, safety and welfare objectives.

- (ii) **The waiver, if granted, would not result in any noncompliance with applicable laws, regulations and codes (including, but not limited to, FCC regulations concerning amateur radio transmission and reception); and**

The provisions contained in Section 25-333 allow for ground-mounting structures and their antennas up to fifty feet in height. Allowing it to be placed in a location that does not meet the setback requirement would not result in noncompliance with applicable laws but, rather, ratify a carefully crafted compromise within this community.

- (iii) **The waiver sought is the minimum waiver necessary to reasonably accommodate amateur service communications at the waiver applicant's property.**

The requested waiver of thirty-seven feet nine inches is the minimum waiver necessary to reasonably accommodate amateur service communication at the waiver applicant's property. This accommodation allows for adequate or reasonable reception and, at the same time, provides the community with the best opportunity to obscure the antennas and support structure from view.

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The agreement reached by the applicant and the community accomplishes the goals (that apply to amateur radio operations) set out in the purpose (Section 25-333(a)) for creating the standards for wireless communication facilities. Based on the above, staff recommends that the Special Exception for a fifty foot tall ground-mounted antenna structure be granted and that the Board grant the thirty-seven foot nine-inch waiver from the setback requirement, subject to the conditions noted on page one.